

AMENDED IN ASSEMBLY JANUARY 4, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1001

Introduced by Assembly Member Maienschein

(Principal coauthor: Senator Vidak)

(Coauthors: Assembly Members Chávez, Olsen, and Waldron)

(Coauthor: Senator Bates)

February 26, 2015

An act to amend Section ~~11166~~ of the Penal 1554 of, and to add Sections 1550.1 and 1556.5 to, the Health and Safety Code, and to amend Section 10605.5 of the Welfare and Institutions Code, relating to child abuse.

LEGISLATIVE COUNSEL'S DIGEST

AB 1001, as amended, Maienschein. Child abuse: ~~reporting.~~ reporting: foster family agencies.

(1) *The Child Abuse and Neglect Reporting Act requires a mandated reporter, as defined, to make a report to a specified agency whenever the mandated reporter, in his or her professional capacity or within the scope of his or her employment, has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect. Under existing law, the failure to make this report is a crime. Existing law also prohibits a supervisor or administrator from impeding or inhibiting the reporting duties, provides that a person making the report shall not be subject to any sanctions for making the report, and prohibits internal procedures to facilitate reporting from requiring any employee required to make reports to disclose his or her identity to the employer.*

Existing law, the California Community Care Facilities Act (the act), governs the licensing and regulation of community care facilities, as defined, including foster family agencies for children. Existing law vests responsibility for administering and enforcing laws and regulations governing those facilities in the State Department of Social Services.

This bill would require the department to deny an application for, or suspend or revoke, a license pursuant to the act, upon a finding that the applicant or licensee has impeded or inhibited those mandated reporting duties, sanctioned a person making a report, or required an employee to disclose his or her identity to the employer in violation of the provisions described above governing mandated reporters. The bill would prohibit the reinstatement of a license, registration, or special permit that is suspended pursuant to this provision, as specified. The bill would also impose other related requirements on the department governing conditions of licensure.

(2) Existing law requires the department, in consultation with counties and labor organizations, to establish a process to receive voluntary disclosures from social workers, if a social worker has reasonable cause to believe that a policy, procedure, or practice, related to the provision of child welfare services by a county child welfare agency, meets any of specified conditions, including that the policy, procedure, or practice endangers the health or well-being of children or is contrary to existing statute or regulation. Existing law requires the department to make available to counties and labor organizations a description of the process established, and, no later than January 1, 2018, to report to the Legislature the total number of relevant disclosures received from social workers and a summary description of both the issues raised in the disclosures received and the actions taken by the department in response to the disclosures, and to post the information on the department's Internet Web site.

This bill would, effective January 1, 2018, require the department to carry out the duties imposed pursuant to these provisions with respect to voluntary disclosures from social workers employed at a foster family agency, as defined, including, but not limited to, disclosures from social workers who have reasonable cause to believe that a policy, procedure, or practice violates the provisions governing mandated reporters described in paragraph (1). The bill would require the department to make a report regarding this information, similar to the report required pursuant to existing law, no later than July 1, 2019, and to post the information on its Internet Web site.

~~The Child Abuse and Neglect Reporting Act requires a mandated reporter, as defined, to make a report to a specified agency whenever the mandated reporter, in his or her professional capacity or within the scope of his or her employment, has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect. Under existing law, the failure to make this report is a crime.~~

~~This bill would prohibit a person from impeding or interfering with the making of a report of suspected child abuse or neglect by a mandated reporter. The bill would provide that an intentional violation of these provisions is a misdemeanor and may subject the offender to liability for actual damages sustained by a victim of child abuse or neglect for any abuse or neglect that occurs after the person impeded or interfered with the report being made.~~

~~By creating a new crime, this bill would impose a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~yes~~*no*.

The people of the State of California do enact as follows:

- 1 *SECTION 1. Section 1550.1 is added to the Health and Safety*
- 2 *Code, to read:*
- 3 *1550.1. The department shall deny an application for, or*
- 4 *suspend or revoke, any license, or any special permit, certificate*
- 5 *of approval, or administrator certificate, issued under this chapter,*
- 6 *or shall deny a transfer of a license pursuant to paragraph (2) of*
- 7 *subdivision (c) of Section 1524, upon a finding that the applicant*
- 8 *or licensee has impeded or inhibited mandated reporting duties*
- 9 *within the meaning of subdivision (i) of Section 11166 of the Penal*
- 10 *Code, or sanctioned a person making a report within the meaning*
- 11 *of that subdivision, or required an employee to disclose his or her*
- 12 *identity to the employer in violation of that subdivision.*
- 13 *SEC. 2. Section 1554 of the Health and Safety Code is amended*
- 14 *to read:*

1 1554. Any license, registration, or special permit suspended
2 pursuant to this chapter, and any special permit revoked pursuant
3 to this chapter, may be reinstated pursuant to the provisions of
4 Section 11522 of the Government Code. *This section does not*
5 *apply to a license, registration, or special permit that is suspended*
6 *or to a special permit that is revoked pursuant to Section 1550.1.*

7 SEC. 3. Section 1556.5 is added to the Health and Safety Code,
8 to read:

9 1556.5. (a) If the department, as a condition of licensure,
10 requires the chief executive officer or other authorized member of
11 the board of directors and the administrator of a foster family
12 agency to attend an orientation given by the licensing agency that
13 outlines the applicable rules and regulation for operation of a
14 foster family agency, that orientation shall include, but not be
15 limited to, a description of policies, procedures, or practices that
16 violate paragraph (1) or (2) of subdivision (i) of Section 11166 of
17 the Penal Code.

18 (b) If the department requires, as part of an application for
19 licensure for a foster family agency, a written plan of operation,
20 that plan of operation shall include a written plan establishing
21 policies, procedures, or practices to ensure that the foster family
22 agency does not violate paragraph (1) or (2) of subdivision (i) of
23 Section 11166 of the Penal Code.

24 (c) For purposes of this section, a foster family agency is defined
25 in paragraph (4) of subdivision (a) of Section 1502.

26 SEC. 4. Section 10605.5 of the Welfare and Institutions Code
27 is amended to read:

28 10605.5. (a) (1) The department, in consultation with counties
29 and labor organizations, shall establish, no later than January 1,
30 2016, a process to receive voluntary disclosures from social
31 workers, if a social worker has reasonable cause to believe that a
32 policy, procedure, or practice, related to the provision of child
33 welfare services by a county child welfare agency, meets any of
34 the following conditions:

35 (A) Endangers the health or well-being of a child or children.

36 (B) Is contrary to existing statute or regulation.

37 (C) Is contrary to public policy.

38 (2) Notwithstanding any other law, the department shall not
39 disclose to any person or entity the identity of a social worker
40 making a disclosure described in paragraph (1), unless (A) the

1 social worker has consented to the disclosure or (B) there is an
2 immediate risk to the health and safety of a child.

3 (b) The department shall make available a description of the
4 process established pursuant to subdivision (a) to counties and
5 labor organizations.

6 (c) For purposes of this section, “county child welfare agency”
7 includes a county welfare department, child welfare department,
8 and any other county agency that employs social workers and is
9 responsible for the placement and supervision of children and
10 youth in foster care, including department social workers contracted
11 by counties to perform direct adoption services.

12 (d) (1) No later than January 1, 2018, the department shall
13 report to the Legislature only the following information:

14 (A) The total number of relevant disclosures received from
15 social workers, including the month and year the disclosure was
16 received.

17 (B) A summary description of both of the following:

18 (i) The issues raised in the disclosures received from a social
19 worker.

20 (ii) The actions taken by the department in response to the
21 disclosures.

22 (2) No later than January 1, 2018, the department shall post on
23 its Internet Web site the information described in paragraph (1).

24 (3) The report required pursuant to paragraph (1) shall be
25 submitted in compliance with Section 9795 of the Government
26 Code.

27 (e) (1) *Effective January 1, 2018, all of the duties imposed on*
28 *the department pursuant to subdivisions (a) and (b) shall apply*
29 *with respect to the receipt of voluntary disclosures from social*
30 *workers employed at a foster family agency, as defined in Section*
31 *1502 of the Health and Safety Code, including, but not limited to,*
32 *disclosures from social workers who have reasonable cause to*
33 *believe that a policy, procedure, or practice violates paragraph*
34 *(1) or (2) of subdivision (i) of Section 11166 of the Penal Code.*

35 (2) *No later than July 1, 2019, the department shall report to*
36 *the Legislature only the following information:*

37 (A) *The total number of relevant disclosures received from*
38 *social workers employed at foster family agencies, including the*
39 *month and year the disclosure was received.*

40 (B) *A summary description of both of the following:*

1 (i) *The issues raised in the disclosures received from a social*
2 *worker.*

3 (ii) *The actions taken by the department in response to the*
4 *disclosures.*

5 (3) *No later than July 1, 2019, the department shall post on its*
6 *Internet Web site the information described in paragraph (1).*

7 (4) *The report required pursuant to paragraph (2) shall be*
8 *submitted in compliance with Section 9795 of the Government*
9 *Code.*

10 SECTION 1. ~~Section 11166 of the Penal Code is amended to~~
11 ~~read:~~

12 ~~11166. (a) Except as provided in subdivision (d), and in~~
13 ~~Section 11166.05, a mandated reporter shall make a report to an~~
14 ~~agency specified in Section 11165.9 whenever the mandated~~
15 ~~reporter, in his or her professional capacity or within the scope of~~
16 ~~his or her employment, has knowledge of or observes a child whom~~
17 ~~the mandated reporter knows or reasonably suspects has been the~~
18 ~~victim of child abuse or neglect. The mandated reporter shall make~~
19 ~~an initial report by telephone to the agency immediately or as soon~~
20 ~~as is practicably possible, and shall prepare and send, fax, or~~
21 ~~electronically transmit a written followup report within 36 hours~~
22 ~~of receiving the information concerning the incident. The mandated~~
23 ~~reporter may include with the report any nonprivileged~~
24 ~~documentary evidence the mandated reporter possesses relating~~
25 ~~to the incident.~~

26 ~~(1) For purposes of this article, “reasonable suspicion” means~~
27 ~~that it is objectively reasonable for a person to entertain a suspicion,~~
28 ~~based upon facts that could cause a reasonable person in a like~~
29 ~~position, drawing, when appropriate, on his or her training and~~
30 ~~experience, to suspect child abuse or neglect. “Reasonable~~
31 ~~suspicion” does not require certainty that child abuse or neglect~~
32 ~~has occurred nor does it require a specific medical indication of~~
33 ~~child abuse or neglect; any “reasonable suspicion” is sufficient.~~
34 ~~For purposes of this article, the pregnancy of a minor does not, in~~
35 ~~and of itself, constitute a basis for a reasonable suspicion of sexual~~
36 ~~abuse.~~

37 ~~(2) The agency shall be notified and a report shall be prepared~~
38 ~~and sent, faxed, or electronically transmitted even if the child has~~
39 ~~expired, regardless of whether or not the possible abuse was a~~

1 factor contributing to the death, and even if suspected child abuse
2 was discovered during an autopsy.

3 ~~(3) A report made by a mandated reporter pursuant to this~~
4 ~~section shall be known as a mandated report.~~

5 ~~(b) If, after reasonable efforts, a mandated reporter is unable~~
6 ~~to submit an initial report by telephone, he or she shall immediately~~
7 ~~or as soon as is practicably possible, by fax or electronic~~
8 ~~transmission, make a one-time automated written report on the~~
9 ~~form prescribed by the Department of Justice, and shall also be~~
10 ~~available to respond to a telephone followup call by the agency~~
11 ~~with which he or she filed the report. A mandated reporter who~~
12 ~~files a one-time automated written report because he or she was~~
13 ~~unable to submit an initial report by telephone is not required to~~
14 ~~submit a written followup report.~~

15 ~~(1) The one-time automated written report form prescribed by~~
16 ~~the Department of Justice shall be clearly identifiable so that it is~~
17 ~~not mistaken for a standard written followup report. In addition,~~
18 ~~the automated one-time report shall contain a section that allows~~
19 ~~the mandated reporter to state the reason the initial telephone call~~
20 ~~was not able to be completed. The reason for the submission of~~
21 ~~the one-time automated written report in lieu of the procedure~~
22 ~~prescribed in subdivision (a) shall be captured in the Child Welfare~~
23 ~~Services/Case Management System (CWS/CMS). The department~~
24 ~~shall work with stakeholders to modify reporting forms and the~~
25 ~~CWS/CMS as is necessary to accommodate the changes enacted~~
26 ~~by these provisions.~~

27 ~~(2) This subdivision shall not become operative until the~~
28 ~~CWS/CMS is updated to capture the information prescribed in this~~
29 ~~subdivision.~~

30 ~~(3) This subdivision shall become inoperative three years after~~
31 ~~this subdivision becomes operative or on January 1, 2009,~~
32 ~~whichever occurs first.~~

33 ~~(4) On the inoperative date of these provisions, a report shall~~
34 ~~be submitted to the counties and the Legislature by the State~~
35 ~~Department of Social Services that reflects the data collected from~~
36 ~~automated one-time reports indicating the reasons stated as to why~~
37 ~~the automated one-time report was filed in lieu of the initial~~
38 ~~telephone report.~~

39 ~~(5) Nothing in this section shall supersede the requirement that~~
40 ~~a mandated reporter first attempt to make a report via telephone;~~

1 or that agencies specified in Section 11165.9 accept reports from
2 mandated reporters and other persons as required.

3 ~~(e) A mandated reporter who fails to report an incident of~~
4 ~~known or reasonably suspected child abuse or neglect as required~~
5 ~~by this section is guilty of a misdemeanor punishable by up to six~~
6 ~~months confinement in a county jail or by a fine of one thousand~~
7 ~~dollars (\$1,000) or by both that imprisonment and fine. If a~~
8 ~~mandated reporter intentionally conceals his or her failure to report~~
9 ~~an incident known by the mandated reporter to be abuse or severe~~
10 ~~neglect under this section, the failure to report is a continuing~~
11 ~~offense until an agency specified in Section 11165.9 discovers the~~
12 ~~offense.~~

13 ~~(d) (1) A clergy member who acquires knowledge or a~~
14 ~~reasonable suspicion of child abuse or neglect during a penitential~~
15 ~~communication is not subject to subdivision (a). For the purposes~~
16 ~~of this subdivision, "penitential communication" means a~~
17 ~~communication, intended to be in confidence, including, but not~~
18 ~~limited to, a sacramental confession, made to a clergy member~~
19 ~~who, in the course of the discipline or practice of his or her church,~~
20 ~~denomination, or organization, is authorized or accustomed to hear~~
21 ~~those communications, and under the discipline, tenets, customs,~~
22 ~~or practices of his or her church, denomination, or organization,~~
23 ~~has a duty to keep those communications secret.~~

24 ~~(2) Nothing in this subdivision shall be construed to modify or~~
25 ~~limit a clergy member's duty to report known or suspected child~~
26 ~~abuse or neglect when the clergy member is acting in some other~~
27 ~~capacity that would otherwise make the clergy member a mandated~~
28 ~~reporter.~~

29 ~~(3) (A) On or before January 1, 2004, a clergy member or any~~
30 ~~custodian of records for the clergy member may report to an agency~~
31 ~~specified in Section 11165.9 that the clergy member or any~~
32 ~~custodian of records for the clergy member, prior to January 1,~~
33 ~~1997, in his or her professional capacity or within the scope of his~~
34 ~~or her employment, other than during a penitential communication,~~
35 ~~acquired knowledge or had a reasonable suspicion that a child had~~
36 ~~been the victim of sexual abuse and that the clergy member or any~~
37 ~~custodian of records for the clergy member did not previously~~
38 ~~report the abuse to an agency specified in Section 11165.9. The~~
39 ~~provisions of Section 11172 shall apply to all reports made pursuant~~
40 ~~to this paragraph.~~

1 (B) This paragraph shall apply even if the victim of the known
2 or suspected abuse has reached the age of majority by the time the
3 required report is made.

4 (C) The local law enforcement agency shall have jurisdiction
5 to investigate any report of child abuse made pursuant to this
6 paragraph even if the report is made after the victim has reached
7 the age of majority.

8 (e) (1) A commercial film, photographic print, or image
9 processor who has knowledge of or observes, within the scope of
10 his or her professional capacity or employment, any film,
11 photograph, videotape, negative, slide, or any representation of
12 information, data, or an image, including, but not limited to, any
13 film, filmstrip, photograph, negative, slide, photocopy, videotape,
14 video laser disc, computer hardware, computer software, computer
15 floppy disk, data storage medium, CD-ROM, computer-generated
16 equipment, or computer-generated image depicting a child under
17 16 years of age engaged in an act of sexual conduct, shall,
18 immediately or as soon as practicably possible, telephonically
19 report the instance of suspected abuse to the law enforcement
20 agency located in the county in which the images are seen. Within
21 36 hours of receiving the information concerning the incident, the
22 reporter shall prepare and send, fax, or electronically transmit a
23 written followup report of the incident with a copy of the image
24 or material attached.

25 (2) A commercial computer technician who has knowledge of
26 or observes, within the scope of his or her professional capacity
27 or employment, any representation of information, data, or an
28 image, including, but not limited to, any computer hardware,
29 computer software, computer file, computer floppy disk, data
30 storage medium, CD-ROM, computer-generated equipment, or
31 computer-generated image that is retrievable in perceivable form
32 and that is intentionally saved, transmitted, or organized on an
33 electronic medium, depicting a child under 16 years of age engaged
34 in an act of sexual conduct, shall immediately, or as soon as
35 practicably possible, telephonically report the instance of suspected
36 abuse to the law enforcement agency located in the county in which
37 the images or material are seen. As soon as practicably possible
38 after receiving the information concerning the incident, the reporter
39 shall prepare and send, fax, or electronically transmit a written

1 followup report of the incident with a brief description of the
2 images or materials.

3 (3) For purposes of this article, “commercial computer
4 technician” includes an employee designated by an employer to
5 receive reports pursuant to an established reporting process
6 authorized by subparagraph (B) of paragraph (43) of subdivision
7 (a) of Section 11165.7.

8 (4) As used in this subdivision, “electronic medium” includes,
9 but is not limited to, a recording, CD-ROM, magnetic disk memory,
10 magnetic tape memory, CD, DVD, thumbdrive, or any other
11 computer hardware or media.

12 (5) As used in this subdivision, “sexual conduct” means any of
13 the following:

14 (A) Sexual intercourse, including genital-genital, oral-genital,
15 anal-genital, or oral-anal, whether between persons of the same or
16 opposite sex or between humans and animals.

17 (B) Penetration of the vagina or rectum by any object.

18 (C) Masturbation for the purpose of sexual stimulation of the
19 viewer.

20 (D) Sadomasochistic abuse for the purpose of sexual stimulation
21 of the viewer.

22 (E) Exhibition of the genitals, pubic, or rectal areas of a person
23 for the purpose of sexual stimulation of the viewer.

24 (f) Any mandated reporter who knows or reasonably suspects
25 that the home or institution in which a child resides is unsuitable
26 for the child because of abuse or neglect of the child shall bring
27 the condition to the attention of the agency to which, and at the
28 same time as, he or she makes a report of the abuse or neglect
29 pursuant to subdivision (a).

30 (g) Any other person who has knowledge of or observes a child
31 whom he or she knows or reasonably suspects has been a victim
32 of child abuse or neglect may report the known or suspected
33 instance of child abuse or neglect to an agency specified in Section
34 11165.9. For purposes of this section, “any other person” includes
35 a mandated reporter who acts in his or her private capacity and
36 not in his or her professional capacity or within the scope of his
37 or her employment.

38 (h) When two or more persons, who are required to report,
39 jointly have knowledge of a known or suspected instance of child
40 abuse or neglect, and when there is agreement among them, the

1 telephone report may be made by a member of the team selected
2 by mutual agreement and a single report may be made and signed
3 by the selected member of the reporting team. Any member who
4 has knowledge that the member designated to report has failed to
5 do so shall thereafter make the report.

6 (i) ~~(1)~~ The reporting duties under this section are individual,
7 and no supervisor or administrator may impede or inhibit the
8 reporting duties, and no person making a report shall be subject
9 to any sanction for making the report. However, internal procedures
10 to facilitate reporting and apprise supervisors and administrators
11 of reports may be established provided that they are not inconsistent
12 with this article.

13 (2) ~~The internal procedures shall not require any employee~~
14 ~~required to make reports pursuant to this article to disclose his or~~
15 ~~her identity to the employer.~~

16 (3) ~~Reporting the information regarding a case of possible child~~
17 ~~abuse or neglect to an employer, supervisor, school principal,~~
18 ~~school counselor, coworker, or other person shall not be a substitute~~
19 ~~for making a mandated report to an agency specified in Section~~
20 ~~11165.9.~~

21 (j) ~~A county probation or welfare department shall immediately,~~
22 ~~or as soon as practicably possible, report by telephone, fax, or~~
23 ~~electronic transmission to the law enforcement agency having~~
24 ~~jurisdiction over the case, to the agency given the responsibility~~
25 ~~for investigation of cases under Section 300 of the Welfare and~~
26 ~~Institutions Code, and to the district attorney's office every known~~
27 ~~or suspected instance of child abuse or neglect, as defined in~~
28 ~~Section 11165.6, except acts or omissions coming within~~
29 ~~subdivision (b) of Section 11165.2, or reports made pursuant to~~
30 ~~Section 11165.13 based on risk to a child which relates solely to~~
31 ~~the inability of the parent to provide the child with regular care~~
32 ~~due to the parent's substance abuse, which shall be reported only~~
33 ~~to the county welfare or probation department. A county probation~~
34 ~~or welfare department also shall send, fax, or electronically transmit~~
35 ~~a written report thereof within 36 hours of receiving the information~~
36 ~~concerning the incident to any agency to which it makes a~~
37 ~~telephone report under this subdivision.~~

38 (k) ~~A law enforcement agency shall immediately, or as soon~~
39 ~~as practicably possible, report by telephone, fax, or electronic~~
40 ~~transmission to the agency given responsibility for investigation~~

1 of cases under Section 300 of the Welfare and Institutions Code
2 and to the district attorney's office every known or suspected
3 instance of child abuse or neglect reported to it, except acts or
4 omissions coming within subdivision (b) of Section 11165.2, which
5 shall be reported only to the county welfare or probation
6 department. A law enforcement agency shall report to the county
7 welfare or probation department every known or suspected instance
8 of child abuse or neglect reported to it which is alleged to have
9 occurred as a result of the action of a person responsible for the
10 child's welfare, or as the result of the failure of a person responsible
11 for the child's welfare to adequately protect the minor from abuse
12 when the person responsible for the child's welfare knew or
13 reasonably should have known that the minor was in danger of
14 abuse. A law enforcement agency also shall send, fax, or
15 electronically transmit a written report thereof within 36 hours of
16 receiving the information concerning the incident to any agency
17 to which it makes a telephone report under this subdivision.

18 (f) A person shall not impede or interfere with the making of a
19 report of suspected child abuse or neglect required under this
20 section. A person who intentionally impedes or interferes with a
21 report of suspected child abuse or neglect being made is guilty of
22 a misdemeanor, and may be liable for actual damages sustained
23 by a victim of child abuse or neglect for any abuse or neglect that
24 occurs after the person impeded or interfered with the report being
25 made.

26 SEC. 2. No reimbursement is required by this act pursuant to
27 Section 6 of Article XIII B of the California Constitution because
28 the only costs that may be incurred by a local agency or school
29 district will be incurred because this act creates a new crime or
30 infraction, eliminates a crime or infraction, or changes the penalty
31 for a crime or infraction, within the meaning of Section 17556 of
32 the Government Code, or changes the definition of a crime within
33 the meaning of Section 6 of Article XIII B of the California
34 Constitution.